IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 335 OF 2005.

M/s. Aarnav Exports Pvt. Ltd.
and others. .... Petitioners.

Versus

Economic Development Corporation
Ltd. and another. ... Respondents.

Shri S.S. Shah, Advocate for the Petitioners.

Shri M.S. Sonak with Shri N. Vaze, Advocates for the Respondent No.1.

CORAM: R.M.S. KHANDEPARKAR, J.

DATE: 27th JANUARY, 2006.

P.C.:

Heard.

2. The petitioner challenges the Order dated 4th May, 2005 passed in Civil Misc. Application No.215/2003 by the learned District Judge, Panaji. By the impugned Order, the learned District Judge has rejected the preliminary objection sought to be raised by the petitioner on the ground that the respondent-Corporation is a financial institution within the meaning of the said expression 'financial institution' of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and therefore the proceedings are exclusively triable before the Tribunal constituted under he said Act in terms of Section 17 thereof. The contention has been rejected by

the impugned order, holding that the respondent-Corporation is not a financial institution in terms of the said expression under the said Act and in any case, considering the provisions of Section 34(2), the proceedings before the District Court cannot be said to be barred.

3. The contention on behalf of the petitioner is that by virtue of Notification dated 4th January, 1993 issued by the Central Government, the Corporation has already been declared as financial institution and therefore the jurisdiction of the District Court to entertain the proceedings was barred, more particularly in terms of Section 18 of the said Act.

4. On the other hand, it is the contention on behalf of the respondent that the point which is sought to be raised is fully covered by the decision of the Apex Court in ***Unique Butyle Tube Industries (P) Ltd. v. U.P. Financial Corporation and Others*** reported in (2003) 2 S.C.C. 455, followed in three decisions of this Court namely in ***Sicom Limited v. Mehta Sulfites (I) Ltd.*** reported in 2005 (Vol.123) Company Cases 423, ***Sicom Limited v. Co-Nick Alloyys (India) Limited & others*** reported in 2005 (4) Bom. C.R. 653 and in ***Maharashtra State Financial Corporation v. Magna Elastomeric Rollers Pvt. Ltd. & others*** reported in 2005 (4) Bom. C.R. 661.

5. Undoubtedly, the Notification dated 4th January, 1993 was issued in exercise under Section 46 of the State Financial Act, 1951 and not under the Recovery of Debts due to Banks & Financial Institutions Act, 1993. Section 2(h) of the said Act specifically defines 'financial institution' to mean a public financial institution within the meaning of section 4A of the Companies Act, 1956 or such other institution as the Central Government may, having regard to its business activity and the area of its operation in India, by notification, specify. Undoubtedly no such notification has been issued by the Central Government in terms of provisions comprised under Section 2(h),. Indeed no such notification has been brought to my notice nor was ever placed before the District Judge in relation to the respondent-Corporation.

6. Undoubtedly, Section 18 of the said Act provides that no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in section 17 of the said Act. Section 17 of the said Act provides that a Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions for recovery of the debts

due to such banks and financial institutions.

7. It is not in dispute that the Respondent-Corporation is not a Bank. The contention sought to be raised is that the Corporation is a financial institution based on Notification dated 4th January, 1993. As already seen above, the said Notification is issued in exercise of the powers under Section 46 of the State Financial Corporation Act and not under the said Act. Section 2(h) of the said Act specifically provides that in order that a firm may be called a "financial institution" within the meaning of the said Act, it should be either a public financial institution within the meaning of Section 4 of the Companies Act or the one which is so specified by issuance of Notification by the Central Government in that regard. In the absence of any such Notification having been issued, certainly in relation to the respondent-Corporation, it cannot be held to be a financial institution.

8. Even otherwise as submitted by the learned Advocate for the respondent, such institutions are not forbidden from taking recourse before the Civil Court in view of the provisions comprised under Section 34(2) of the said Act. Indeed the law on the said issue is well settled by the decisions relied upon by the learned Advocate for the respondent and need not be reiterated in this order.

9. Some other points were sought to be canvassed. However, undisputedly

none of those points were raised before the District Court. It is not permissible for the petitioner to raise those points while assailing the impugned order by invoking the powers under Article 227 of the Constitution. There is no case made out for interference in the impugned order in exercise of writ jurisdiction.

10. For the reasons stated above there is absolutely no substance in this petition and the petition therefore is rejected.

R.M.S. KHANDEPARKAR, J.

sl.